the point of view which the author maintains, however unobtrusively, throughout the book, the one he styles sociological is the one most likely to be fertile in practical results, in adapting existing legal rules and principles to the constantly changing social situation.

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THE COMMON LAW OF ENGLAND. By W. Blake Odgers and Walter Blake Odgers. Second Edition. London: Sweet and Maxwell, Limited. (Toronto: The Carswell Co., Ltd.). 1920. 2 vols. pp. xcvi, 1584.

The title of this treatise is somewhat misleading; for it is an exposition of the present statute law of England fully as much as of the common law. But the title is derived from Broom's Commentaries on the Common Law, the tenth edition of which is the first edition of the present treatise. In the present treatise the reference to Broom's Commentaries is abandoned, as well it may be; for although the second edition differs little from the first edition, yet that was largely the original work of its authors. The authors show a preference for law in the statutory form; indeed the treatise ends with a plea for Codification as a sure means of making the law "clear and intelligible and readily accessible to all" (p. 1467). Those parts of the work which deal with statutes are indeed the best, particularly those relating to the adjective law and the law as to criminal offenses.

What we have, then, is a summary of the present law of England. From the practitioner's point of view, the book is necessarily too general to be of great value. From the point of view of students of the law, it does not sufficiently discuss the fundamental principles which must serve as an introduction to any real knowledge of the law. If a lawyer or student wishes to ascertain in a general way the English law on some point not too intricate or involved, he will often find the answer in this book. The fact that a second edition has been called for after an interval of ten years shows that the book has its uses. But certainly it is not as useful as Mr. Odgers' works on Pleading and on Slander and Libel.

A. W. S.

A TREATISE ON INTERNATIONAL LAW, WITH AN INTRODUCTORY ESSAY ON THE DEFINITION AND NATURE OF THE LAWS OF HUMAN CONDUCT. By Roland R. Foulke. Philadelphia: The John C. Winston Co. 1920. 2 vols. pp. lxxxviii, 482; lxxxviii, 518.

It was one of the wise observations of John Chipman Gray that "a loose vocabulary is the fruitful mother of evils." Mr. Foulke's notable work on the law of perpetuities and future interests seems to have led him to share Mr. Gray's dissatisfaction with a jurisprudence "encysted in phrases," and this treatise represents an attempt to clear away some misconceptions and confusions which such a jurisprudence has produced in international law. The field has long stood in need of such a fresh approach. The cumulation of expressions which baffle analysis and becloud understanding has proceeded in most fields of law with too little challenge, and in international law few attempts have been made to resist it. Constant clarification seems essential to keeping law serviceable to practical life in a world where human beings refuse to range their activities around legal categories and conceptions. Any serious attempt to revise the "old outfit of ideas, discriminations and phrases," as James Bradley Thayer termed it, is to be welcomed. The struggle between law and logomachy must be fought by each generation for itself.

Mr. Foulke has perceived that where the same furrows have been followed for many generations there is likely to be a "rich mine for analytical investigation." He purports only to have "scraped the surface" of the mine and exposed its riches. The profession will doubtless be grateful for some of his departures. A treatise on international law which states frankly that it proposes to "waste no time in chasing shadows" and therefore discards the word *sovereignty* "entirely"; which boldly asserts that the fiction of extra-territoriality "may now be freely discarded by clear thinkers"; which lightly suggests that the term *science,* as applied to international law, is "only another illustration of the fondness of writers for multiplying words" — such a treatise is certain to have been written without idle drifting with the current of classification and conception. Statements of this sort give Mr. Foulke's treatise an appearance of realism, and the reader finds much of his verbal daily bread in the author's scrap-heap.

Unfortunately the realism is largely a semblance in this case. So bold an effort demanded the richest scholarship and the broadest scientific equipment. Mere freedom from encysted thinking is not an end in itself. It may mean a failure to perceive the troublesome factors in complex affairs. It may spell a refusal to admit the existence of difficulties with which knowledge and method are unequipped to deal. The high road may be the only safe road to a traveler unprepared for the uncertainties of the by-paths. Where Mr. Foulke discards one abstraction, he seems to invent another to take its place.

The first chapter on the nature of law is devoted to analytical jurisprudence, but it shows little familiarity with notable recent contributions in that field. It may be too much to expect of American scholarship the mastery of recent continental progress in juristic thinking, though international law of all fields would seem to call for the broader treatment. But it seems quite proper to demand of an American scholar, who writes on jurisprudence, some knowledge of the work of American writers like Terry and Gray and Pound and Hohfeld. Yet Mr. Foulke analyzes fundamental terms like *right, power,* and *interest* without even a reference to the storm that is raging around Hohfeld's work. If we stood in need of a definition of law, we should want to know that it took account of what has been happening in other fields of social science like psychology. In framing his definition, Mr. Foulke has wisely sought to explain the factors determining human conduct; but in using such expressions as "the gregarious instinct," he has neglected the efforts of the psychologists to understand the realities behind such troublesome phrases. It is to be hoped that the day has passed when the American bar is willing to isolate law from other social sciences and to proceed as though no progress had been made in them since Blackstone. If a writer on jurisprudence would make a contribution to understanding at the present time, he must not be content to use such terms as *instinct* and leave them unexplained. One may agree with Mr. Foulke that "law is a mental conception," "a pure philosophical speculation" having "no motive, no activity, no purpose" of its own. It is at least a pleasant contrast with the conception of law as "a brooding omnipresence in the sky." But in a world of surging affairs it offers little help in solving the problems of workaday life.

In a second chapter on the "facts of international life," the treatise again presents a semblance of realism. This chapter seems to express a "practical" man's revolt from "theories," and his desire to get "back to facts." But throughout the chapter, one lacks a sense of the author's realization that questions of fact always involve questions of value, and that perception of facts is largely a process of assessing valuations. It is all too easily assumed that in the field of international relations, as in the physics laboratory, given phenomena will produce the same impression on every human eye, regardless of the intellectual spectacles which may be worn. Hence we find this chapter

on the facts of international life dealing with such subjects as the equality of states, the recognition of states, and the nature of jurisdiction. We find the author speaking of states as "living organisms," to which he assigns certain "inherent" qualities, such as dignity, honor, and reputation. It is not surprising, therefore, to find significance attached to the custom of referring to monarchies and kingdoms in the feminine gender and to republics in the neuter gender. An author who thinks that in municipal law "the animal man is the principal fact," easily abstracts states as the principal *facts* in international life, and his dealing with the law applicable to these abstract states has little reference to the political events of the last half century. A legal adviser of a foreign office would hardly turn to Mr. Foulke's discussion of states if he found it necessary to deal with questions arising in connection with the new governments erected on the territory of the former Russian Empire. Mr. Foulke's "facts" are extracted from a world of words, not from a world of political events. This process made it possible for him to reach the hopeful conclusion that "the probability is that modern civilization has now seen the final culmination of the struggle for popular liberty and that absolute governments will practically disappear from the world." The conclusion would probably occasion no dispute in "Main Street."

That part of the treatise which deals with substantive international law contains little that is new or striking. Its "logical arrangement" is undoubtedly some improvement on the classical chapter topics for a treatise on international law. It is generally free from over-reliance on analogies to private-law conceptions, but the statement that "fisheries in the maritime belt are universally admitted to be solely the property of the littoral state" (I, p. 401) is an unfortunate exception; so also the statement that "a federal constitution is the result of a treaty between several states, just as marriage is the result of a previous engagement to marry" (I, p. 476). In referring to the transfer of territory as "international conveyancing," the author lends aid to the modern writers who seem to think that sovereignty, like seisin, must not be in abeyance.

Since the treatise appears just at the end of the World War, perhaps future students will have some charity toward the treatment of problems acute while Mr. Foulke was writing. But they will hardly condone his reference to the German people as the "German tribes" (II, p. 230); nor are they likely to accept his unilateral title for the recent war, which he calls the "War of German Aggression." The discussion of questions on which the Allies had opposed the Central Powers is pitched in the tone of these references, and discloses a bias which will probably lead judicious persons to attach less weight to the author's views on important questions about which controversy is raging.

M. O. H.

INTERNATIONAL LAW. By L. Oppenheim. Vol. I — Peace. Third Edition, edited by Ronald F. Roxburgh. London and New York: Longmans, Green and Company. 1920. pp. xliii, 799.

For fifteen years this has been the English work on international law most highly esteemed for bibliographical material and also for wide scope. This new edition, prepared with the aid of notes left by the author, retains the qualities of its predecessors.

In examining a book so long esteemed, what one emphasizes is necessarily the new matter. Among the passages appearing for the first time in this edition are those dealing with the development of international law in the World War (§ 50*a*), the Peace Conference (§ 50*b*), the past and present positions of self-governing dominions (§§ 94*a*, 94*b*), the American punitive expedition into Mexico and the occupation of Juarez (§§ 133*a*, 133*b*), the German invasion of